



## Legal Update

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June 26, 2014

### **The Supreme Court holds that police need a warrant to search cell phones even when searching an individual incident to arrest!**

The United States Supreme Court consolidated two cases *Riley v California* and *U.S. v Wurie* because they both questioned whether police could search cell phones without a warrant even if the search was conducted incident to arrest. The facts of each case are listed below:

#### ***Riley v California*, U.S. Supreme Court, (No. 13-132) (2014):**

The police stopped the petitioner, David Riley (hereinafter referred to as "Riley") for expired registration tags. When the police discovered that Riley had a suspended license, his vehicle was impounded and an inventory search was conducted pursuant to departmental policy. The police arrested Riley for possession of concealed and loaded firearms after they recovered (2) two handguns from the vehicle's hood. A police officer searched Riley incident to the arrest and found items associated with the "Bloods" street gang along with Riley's cell phone. Riley maintains that police seized his "smart phone," which is different than a typical cell phone because it has "a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity." The police officer searched the contacts list contained within the text messages and saw the letters "CK" - a label that the officer believed, stood for "Crip Killers," a slang term for members of the Bloods gang.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

Two hours after Riley was arrested, a detective specializing in gangs further examined the contents of the phone. The detective testified that he "went through" Riley's phone "looking for evidence, because . . . gang members will often video themselves with guns or take pictures of themselves with the guns." Although there was "a lot of stuff " on the phone, particular files that "caught [the detective's] eye" included videos of young men sparring while someone yelled encouragement using the moniker "Blood." The police also found photographs of Riley standing in front of a vehicle they suspected had been involved in a shooting a few weeks earlier.

Riley was charged in connection with the earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. Prior to trial, Riley moved to suppress all evidence that the police had obtained from his cell phone because he maintained the search violated his Fourth Amendment rights since it was performed without a warrant and there were no exigent circumstances. Riley's motion was denied and he was convicted on all three count.

***U.S. v Wurie*, U .S. Supreme Court, No. (No. 13-212) (2014):**

Police were performing routine surveillance when they observed respondent, Brima Wurie (hereinafter referred to as "Wuire") make an apparent drug sale from a vehicle. Wurie was arrested and brought to the police station. Police seized two cell phones including a flip phone from Wurie. Unlike a smartphone, "a "flip phone" is a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone." At the station, police noticed Wurie's cell phone repeatedly receiving calls from a source identified as "my house" on the phone's external screen. When police opened the phone they saw a picture of a woman holding a baby as the wallpaper. Police pressed one button on the phone to access its call log, then another button to determine the phone number associated with the "my house" label. Police were able to find an apartment number affiliated with the phone number under the "my house" label. At the apartment, police saw Wurie's name on a mailbox and they executed a search warrant for the apartment. Police seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash. Wurie was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition. Wurie filed a motion to suppress the evidence obtained from the search of the apartment, arguing that it was the fruit of an unconstitutional search of his cell phone and the District Court denied the motion. The 1<sup>st</sup> Circuit Court of Appeals heard the case and reversed the District Court's order.

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**Conclusion:** The Supreme Court concluded that police need to get a warrant to search a person's cell phone even if the phone is searched incident to arrest. The Supreme Court found that "modern cell phones are not just another technological convenience," and "the fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought." The Supreme Court held that its response to "the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple — get a warrant." The two traditional grounds for allowing a search incident to arrest — harm to the officer and destruction of evidence — also would not apply since digital data poses no harm to police and the destruction of evidence stored within the phone can be preserved. Although "this decision will have some impact on the ability of law enforcement to combat crime, the Supreme Court clarified that "information on a cell phone **will generally require a warrant before a search but is not immune from search.**"

### **1<sup>st</sup> Issue: After an arrest, can police search a person's cell phone?**

The Supreme Court considered three key cases that involved searches incident to a lawful arrest before concluding that the search of Wurie and Riley's phones was not reasonable nor did it qualify as a search incident to lawful arrest exception.

First, the Supreme Court considered the *Chimel* case which established that searching an individual after an arrest is reasonable and lawful. *Chimel v. California*, 395 U.S. 752, (1969). However, the Supreme Court concluded that the extensive warrantless search of Chimel's home, attic, garage and content of drawers, was not lawful because it was not needed to protect officer safety or to preserve evidence. *Id.* at 763.

Following *Chimel*, the Court considered whether police could search a person who was stopped for a revoked license. *United States v. Robinson*, 414 U.S. 218, (1973). In *Robinson*, the officer searched the driver and the inside of a cigarette box that was removed from the driver's coat. The lower court held that the police exceeded the scope of the search by looking inside the cigarette box. Contrary to the lower court's decision, the Supreme Court concluded that the "custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment and is lawful as a search incident to arrest, requires no additional justification" *Id.* at 235.

The final case the Supreme Court analyzed involved searches of an arrestee's vehicle. The Supreme Court concluded that searching a vehicle when an arrestee is unsecured and within reaching distance of the passenger compartment or police reasonably believe that evidence of the crime of arrest might be found in the vehicle is lawful. *Arizona v. Gant*, 556 U. S. 332, (2004).

After analyzing these pivotal cases, the Supreme Court weighed how searches incident to arrest apply to cell phones and how an individual's privacy interests can be balanced with a legitimate government interest. *Wyoming v. Houghton*, 526 U. S. 295 (2000). Today, "cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's persons because cell phones have immense storage capacity." Since

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people store volumes of personal information within phones, an individual's privacy concerns outweigh any government interest.

While police can certainly examine the physical aspects of a phone to insure there is no razor blade hidden between the phone and the case, the Supreme Court did not agree that cell phones are harmful to police. One theory presented was that the cell phone could be used to contact other individuals to arrive on scene to challenge police. The Supreme Court concluded that an arrestee contacting others to arrive on scene was not a prevailing problem. Similarly, the destruction of evidence contained within the cell phone also does not qualify as an exigent circumstance. Police can remove a cell phone battery or place a cell phone in a Faraday Bag to avoid remote wiping or data encryption.

## **2<sup>nd</sup> Issue: Could police search cell phones without a warrant under the exigent circumstances exception?**

The Supreme Court concluded that since "digital data stored in cell phone causes no harm to police," and the destruction of data via remote wiping or data encryption can be prevented, a warrantless search of a cell phone based on these premises would not qualify as an exigent circumstance. Some of the **exigencies could include the need:**

- to prevent the imminent destruction of evidence in individual cases,
- to pursue a fleeing suspect, and
- to assist persons who are seriously injured or are threatened with imminent injury.

The Court also held that "in light of the availability of the exigent circumstances exception, there is no reason to believe that law enforcement officers will not be able to address **some of the more extreme hypotheticals** that have been suggested:

- a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or
- a child abductor who may have information about the child's location on his cell phone."

**Commentary:** This ruling is significant because it gives guidance to law enforcement as to whether they need a warrant is needed to look through a suspect's cell phone at arrest and the limits of this search. In light of this ruling, the limited warrantless search of call history logs that were upheld in *Phifer* and *Berry* would not be lawful without a warrant now. The Supreme Court specifically stated that searching call phone logs would be prohibited even if police suspect they may find evidence affiliated with the crime the person is arrested for and even if searched after an arrest.

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